IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.628 OF 2007

Sanjug Trading Company Ltd. ....Petitioner
V/s.
Samidha Mercantile Pvt.Ltd. & Ors. ....Respondents

Mr.Rishab Shah with Ms.Hemani Jhariya for the Petitioner.

Mr.C.K. Ardeshir i/b Kanga & Co. for Respondent No.1.

Mr.Birendra Saraf i/b M.M. Ambalal & Co. for Respondent No.3.

Mr.A.A. Bookwala, Senior Counsel with Ms.Lata Bachani i/b I.R. Doshi & Co. for Executive Trading Co. Pvt. Ltd.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 3RD APRIL, 2007.

P.C. :

Rule. Heard forthwith.

2. On the last date the matter was adjourned for today to continue the process of bidding at the request of the learned counsel for the Petitioner. When the matter comes up, Mr.Bookstall appears for Executive Trading Co. Pvt. Ltd. hands over a pay order in the sum of Rs.50.00 lacs and prays that he be permitted to participate in the bidding. Considering

that the bid had not closed and only if the intervenor bids over Rs.7.01 crores will the intervenor be allowed to participate as ultimately the object of auction is to get the best value, we are therefore permitting Executive Trading Co. Pvt. Ltd. to participate in the bidding process.

3. On behalf of the Petitioner Mr.Shah has filed an affidavit setting out that as the valuation was done in July, 2006 and in view of escalation in the value of the property, it has become imperative for the Petitioner once again to reassess and revalue the property and thereafter to submit the final revised bid. Additional time is therefore prayed for. The Petitioner had on the last occasion participated in the bid and had bid in an amount of Rs.6.90 crores without any fresh revaluation of the property.

. We therefore propose to complete the bidding process, as on the last occasion the matter was adjourned at the request for the Petitioner so as to enable the Petitioner to take instructions from the C.M.D., who at the relevant time was not available. Considering that the bid has gone up from Rs.4.25 crores to Res.7.01 crores, we are not inclined to stay the process. The Petitioner can participate in the

bid. We make it clear that we are allowing the intervenor - Executive Trading Co. Pvt. Ltd. to participate on the condition that if he is the highest bidder, but fails thereafter to pay the amount, the said amount of Rs.50.00 lacs deposited today will be forfeited.

. The bidding process thereafter commenced between Respondent No.1 and intervenor as the Petitioner did not participate in the bidding process. The last bid by the intervenor was Rs.8.00 crores. The Respondent No.1 did not offer a higher bid.

. At this stage the Petitioner who had earlier intimated that they would not participate in the bidding process, now inform the Court that they want to participate in the bidding process and have no objection to the bidding process going on and also will not object to bidding process which had already commenced. Considering that we allow the Petitioner to participate in the bidding process.

4. The Petitioners make a bid in the sum of Rs.8.10 crores. The Petitioner’s bid in the sum of Rs.8.10 crores has not been increased by either the Respondents or the intervenor. We therefore, accept

the Petitioner’s bid in the sum of Rs.8.10 crores as the final bid of the property. The property stands sold to the Petitioner in the sum of Rs.8.10 crores subject to the terms and conditions of the sale, which are at Exhibit "A" to the Petition, with modification as set out below.

5. In terms of clause 1 of the terms and conditions of the sale, the Petitioners are required to deposit 25% of the sum of Rs.8.10 crores within ten days from today. The Petitioner has already deposited with D.R.T. a sum of Rs.4.25 crores. In other words, they have already complied with the request of 25% deposit. In so far as the balance amount is concerned, in terms of the clause of the terms and conditions of the sale, the Petitioner is permitted 15 days from the date of sanction of the sale and time can be further extended by not more than 10 days. Merely because the Petitioner has already deposited the said sum of Rs.4.25 crores with the Registrar of D.R.T., the Petitioner should not ordinarily be deprived of the period of 10 days. On behalf of the Petitioner,the learned counsel points out that he may be granted additional 15 days period other than what is provided in clause 1. Considering the above and on the peculiar facts, in our opinion, the Petitioner can

be granted apart from those 35 days, an additional period of 15 days. Thus totally a period of 40 days after the time for 25% deposit is over. The Period will commence as under :-

The first period of 10 days for 25% deposit will stand completed on 12.4.2007.

The balance amount of 75% will be deposited before the D.R.T. within 40 days of 12.4.2007.

On the said deposit, the Recovery Officer to issue the sale certificate to the Petitioner.

6. The Recovery Officer to compute 75% by taking into consideration the balance amount lying in the account of the Petitioner from the amount of Rs.4.25 crores.

7. If the Petitioner fails to deposit the balance amount set out earlier, the Recovery Officer to act in terms of clause 1 of the terms and conditions of the sale of public auction of the immovable property and then give an opportunity to the intervenor - Executive Trading Co. Pvt. Ltd. who

will be given the same period as has been given to the Petitioner. The amount of Rs.50.00 lacs deposited by the intervenor will be forwarded by the Registry to the D.R.T., D.R.T. to invest the same and in the event the intervenor has to complete the transaction to take into consideration the said amount. If the Petitioner fails to make full payment, forfeiture will be in terms of clause 1 including the amount of Rs.50.00 lacs which has been deposited.

8. In so far as Respondent No.1 is concerned, in the like manner if the intervenor fails to complete the process, Respondent No.1 be given similar time as given to the Petitioner. Out of the amount deposited by Respondent No.1 before the Recovery Officer, the Recovery Officer to keep an amount of Rs.50.00 lacs and return the balance to Respondent No.1 along with accrued interest, if any. The said sum of Rs.50.00 lacs to remain invested till the Respondent No.1 is called upon to exercise their option. If the Respondent No.1 fails to make payment the forfeiture will be in terms of clause 1, including the sum of Rs.50.00 lacs.

. In the event of Respondent No.1 or the intervenor cannot participate on account of sale being

complete in favour of the Petitioner or the intervenor, as the case may be, the Respondent's sums of Rs.50.00 lacs to be returned to both intervenor and Respondent No.1 along with accrued interest, if any.

. We make it clear that the amount which the intervenor had bid was Rs.8.00 crores and which Respondent No.1 had bid was Rs.7.91 crores. We further make it clear that like the Petitioner if either the intervenor or Respondent No.1 are called upon to accept the bid and they fail to comply in terms of clause 1 of the terms and conditions of the sale, the Recovery Officer to act under clause 1 of the terms and conditions of the sale, including forfeiture.

9. Rule made absolute accordingly. There shall be no order as to costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)